

REMARKS

Claims 8 has been amended to overcome the Examiner's rejection of claim 8 on the ground of indefiniteness.

Claim 1 has been amended for clarification purposes and to specify the face size of one of the base flaps. The amendment is based on the language in the specification - of the subject-application at p. 9, lines 9 and 10.

Claims 1, 3 and 7 were rejected under § 103(a) on a combination of Smith and Stracke. Claims 3 and 7 are dependent on claim 1. Reconsideration of such rejection in view of the claim amendments is respectfully requested.

The Examiner admits that Smith does not disclose the top closure flaps claimed. What the Examiner fails to note is that Smith has two embodiments, Figs. 1-4 where there is no bottom closure and adhesive is used to hold segmented partial flaps together, and Figs. 5 and 6 where the bottom closure is a plurality of segmented, interlocking parts and the use of an adhesive is not mentioned. Applicants' container is for the purpose of supporting an article within the container, which the structure of Figs. 1-4 of the Smith patent does not. The structure of Figs. 5 and 6 would not provide a stable support, and the article support is uneven.

Applicants provide a bottom flap of a size which gives a stable, continuous platform for an article.

The Examiner has combined Stracke with Smith contending that it would be obvious to use Stracke's top closures with Smith. First of all there is no need to use Stracke's flaps with Smith since Smith already has a top support. In addition, claim 1 calls for an adhesive flap and bonding to the inside of the box. The Examiner does

contend that Strack discloses such strip or such binding, and therefore, substituting Strack's structure for structure of Smith would not produce the structure claimed.

Also, neither reference discloses a base flap of the size claimed which is articulated on an intermediate flap claimed. Therefore, the base flaps of the references would not be positioned to support an article as in the container of the invention.

Claims 3, 4, 5, 6 and 7 are allowable by reason of their dependence on allowable claim 1. As to the addition of La Duca to reject claim 4, La Duca does not have the combination of spacer and adhesive flaps claimed, and therefore, the use of the La Duca structure, in some untaught manner, in the structures of the other references would not result in the structure claimed in claim 4.

Claim 8 was rejected under § 103(a) on Smith in view of Hamilton. Smith has been discussed hereinbefore. Except for the amendment of claim 1, claim 8 patentably distinguishes over Smith for the same reasons claim 1 distinguishes over Smith. Thus, Smith does not disclose the top closures claimed, and the Examiner admits that Smith does not disclose flaps disposed as claimed. Contrary to the Examiner's statement, Applicant's claimed structure is not a mere rearrangement of parts - it is the placement of different parts in places not suggested by Smith.

Hamilton has been combined with Smith to reject claim 8, and the Examiner refers to Hamilton's bottom flaps as top flaps which is incorrect. Hamilton's top flaps are 5 and 6 etc. Thus, the Examiner is improperly substituting Hamilton's bottom flaps for Smith's top flaps without any teaching of the substitution in the references themselves.

Furthermore, although the Examiner states that the flap 16 of Hamilton is an adhesive flap, Applicants' attorney cannot find any statement in Hamilton that the flap 16 is an adhesive flap.

Claim 9, dependent on claim 8, has been added to include the base tab relationship set forth in amended claim 1. For the reasons set forth hereinbefore in connection with claim 1, claim 9 is allowable over any proper combination of the references.

In view of the present remarks it is believed that claims 1 and 3-9 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No.

14-1263.

Respectfully submitted,

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Date April 8, 2004